

United States Postal Service

§ 952.30

record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed pages double spaced, using 12 point type.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party may be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final agency decision.

§ 952.26 Judicial Officer.

(a) The Judicial Officer is authorized:

- (1) To act as presiding officer;
- (2) To render tentative decisions;
- (3) To render final agency decisions;
- (4) To issue Postal Service orders for the Postmaster General;
- (5) To refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final agency decision;
- (6) To remand a case to the presiding officer for consideration; and,
- (7) To revise or amend these rules of practice.

(b) In determining appeals from initial decisions or exceptions to tentative decisions, the entire official record will be considered before a final agency decision is rendered. Before rendering a final agency decision, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

§ 952.27 Motion for reconsideration.

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving it or within such longer period as the Judicial Officer may order. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§ 952.28 Orders.

(a) If an order is issued which prohibits delivery of mail to Respondent it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be pub-

lished in the Postal Bulletin and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

(b) If an order is issued which requires Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon Respondent or his or her or its agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his or her or its agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

§ 952.29 Modification or revocation of orders.

A party against which an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the Chief Postal Inspector or his or her designee, who shall file a written reply within 10 days after filing or such other period as the Judicial Officer may order. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 952.30 Supplemental orders.

When the Chief Postal Inspector or his or her designee, or the Chief Postal Inspector's designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address, he or she may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the

§ 952.31

order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

§ 952.31 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 952.32 Official record.

The hearing transcript together with all pleadings, orders, exhibits, briefs and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 952.33 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications apply to proceedings under these rules of practice.

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

Sec.

953.1 Authority for rules.

953.2 Initiation.

953.3 Appeal.

953.4 Service of notice; Reply; Motion for summary judgment.

953.5 Hearings.

953.6 Compromise and informal dispositions.

953.7 Default; Appearances.

953.8 Location of hearing.

953.9 Change of place of hearing.

953.10 Presiding officers.

953.11 Proposed findings of fact and conclusions of law.

953.12 Initial decision.

953.13 Appeal from initial decision.

953.14 Final Agency decision.

39 CFR Ch. I (7–1–15 Edition)

953.15 Expedition.

953.16 Disposition.

953.17 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 59 FR 31538, June 20, 1994, unless otherwise noted.

§ 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing of a written appeal with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[63 FR 66050, Dec. 1, 1998]

§ 953.3 Appeal.

The appeal shall:

(a) Identify the appellant;

(b) Describe or be accompanied by a copy of the determination or ruling being appealed;

(c) Describe the character or content of the matter the appellant wishes to have carried and delivered by the U.S. Postal Service;

(d) Request review of the determination or ruling, specifying each and every reason why the appellant believes the determination or ruling should be reversed;

(e) Indicate whether the appellant desires to have an oral hearing or, instead, to have the case decided solely on the basis of the written record (i.e., the appeal, the General Counsel's or Chief Postal Inspector's or his or her designee's reply reply, and any documents submitted by the parties pursuant to an order of the presiding officer); and

(f) Bear the signature, typed or printed name, title, business address, and telephone number of any attorney at law representing the appellant in bringing the appeal, and of each individual appellant or, if the appellant is a partnership, corporation, limited liability company, or unincorporated association, of the managing partner, chief executive officer, chief operating